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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,635	01/05/2001	Robert E. Dvorak	BLFR 1001-1	4822

22470 7590 06/26/2008
HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

MAIL DATE	DELIVERY MODE
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06/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Office Action Summary	Application No.		Applicant(s)	
	09/755,635		DVORAK ET AL.	
	Examiner		Art Unit	
	BETH VAN DOREN		3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-35,37,40-46 and 94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-35,37,40-46 and 94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/08 has been entered.

Claim 94 has been added. Claims 26-27, 29-31, 33-35, and 40-46 have been amended. Claim 93 has been canceled. Claims 26-35, 37, 40-46, and 94 are pending.

Claim Objections

2. Claims 26-35, 37, 40-46, and 94 are objected to because of the following informalities: parentheses.

Claim 94 recites "names for instances of a fixture type (hereinafter "named display fixtures")". The use of parentheses here is confusing. See MPEP 608.01 (m) for parentheses used with respect to reference characters.

Claims 26-35, 37, and 40-46 depend from claim 94 and therefore contain the same deficiencies.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 26-35, 37, 40-46, and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garry (*Making Space Management Work*) in view of Landvater (U.S. 6,609,101).

As per claim 94, Garry teaches a computer-implemented method of improving the efficiency of planning presentations and simulating demand and stocking requirements for items placed in standard display fixture types using in stores having different floor plans, including:

eliciting from a first user a schedule of display fixtures to be used in a plurality of stores having different floor plans and storing the schedule in a data structure stored in computer readable memory (See page 2, section 1, page 4, sections 1-2, page 6, sections 1 and 3, wherein a first user produces a schedule of shelves and store plans for stores in a whole store chain), wherein the resulting schedule of named display fixtures includes

fixture identifiers for a plurality of fixture types (See page 2, page 4, section 1-2, and page 5, section 1, page 6, which discloses gondolas and shelves, and the spacing associated with these fixtures);

capacities of the fixture types to hold items (See page 6, sections 1 and 4); and names for instances of a fixture type used to present the items (See page 2 and page 5, section 1, which discloses gondolas and shelves);

eliciting from a second user store-by-store schedule of named display fixtures used in the stores, wherein the stores have varying floor plans (See page 2, section 1, page 3, section 1, page 4, sections 1-2, wherein a second user modifies the generic planogram for a specific store);

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eliciting a plan to stock the named display fixtures with items to be displayed without requiring the knowledge of the varying floor plans of the stores, and storing the resulting stocking plan in a data structure stored in computer readable memory (See page 2, section 1, page 4, sections 1-2, page 5, section 1, page 6, page 9, section 1), wherein the stocking plan for the named display fixtures includes

presentation quantities of items required (See page 2, section 1, page 4, sections 1-2, page 5, section 1, page 6, page 9, section 1).

However, while Garry discloses stocking considerations and shelf capacity, Garry does not expressly disclose eliciting from a third user a plan, wherein the stocking plan includes dates during which the items will be displayed at particular stores, modeling lead time with time elements which collectively represent the overall lead time for an order or other action to lead to stocking of the named display fixtures at particular stores, simulating sales of the items from the named display fixtures at the stores and calculating orders that would need to be placed for the items to accommodate the simulated sales, the order calculation using at least the selected overall lead time, the presentation dates, and the quantities; and outputting the calculated orders.

Landvater discloses eliciting from a third user a plan, wherein the stocking plan includes dates during which the items will be displayed at particular stores (See column 14, lines 25-45, wherein display configurations are stored in the database. See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the good has a time of display and quantities to be displayed);

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modeling lead time with time elements which collectively represent the overall lead time for an order or other action to lead to stocking of the display fixtures at particular stores (See column 8, lines 19-35, column 9, lines 50-62, column 10, lines 1-2 and 30-55, column 12, lines 10-30 and 40-55, wherein lead time for replenishments, based on the expected sales, is modeled by the system. See also column 14, line 59-column 15, line 25);

simulating sales of the items from the named display fixtures at the stores and calculating orders that would need to be placed for the items to accommodate the simulated sales, the order calculation using at least the selected overall lead time, the presentation dates, and the quantities (See column 8, lines 19-35, column 9, lines 50-62, column 10, lines 1-2 and 30-55, column 12, lines 10-30 and 40-55, wherein sales are forecasted and modeled for a selling period to determine inventory and safety stock considerations, as well as replenishments, based on the expected sales. See also column 14, line 59-column 15, line 25); and

outputting the calculated orders (See column 8, lines 25-40).

Garry discloses a computer program used to plan displays across a chain of stores and refining this plan for specific individual stores. Garry further discloses stocking considerations and shelf capacity associated with the display plans. Landvater discloses storing information concerning presentations and displays in the system and using this information to plan inventory. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Garry in order to more accurately calculate

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the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 26, Garry discloses designating whether or not a quantity of an item at the selling location should be allowed to fall below the presentation quantity between deliveries (See page 6, which discusses how fully stocked shelves are not assumed based on a slush factor).

As per claims 27-29, Garry does not expressly disclose time elements include delivery of the item from a stocking location, preparing the delivered item for sale, or collect data, review action recommendations, process data, pick goods at a stocking location, and ship the item to the selling location.

Landvater discloses wherein the time elements include delivery of the item from a stocking location (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, which discloses a stocking location) and preparing the delivered item for sale (See column 3, lines 10-30, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, which discloses setting up the display of the delivered good). Landvater further discloses wherein the time elements include time required to collect data, review action recommendations, process data, pick goods at a stocking location, and ship the item to the selling location (See column 3, lines 10-30, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, column 16, lines 35-65)

Both Garry and Landvater are concerned with stocking shelves to maintain displays. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the time elements discussed by Landvater in the display planning

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system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater, and page 5, section 1, and page 6, section 4, of Garry.

As per claims 30-34, Garry discloses timing of stock considerations for displays (page 5, section 1, and page 6, section 4), but does not expressly disclose time elements the include periodic dates for actions necessary to make the item available at the plurality of selling locations, time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations, time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations, distributing the item from a supplier through one or more stocking locations to a plurality of selling locations, or time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations.

Landvater discloses wherein the time element further include periodic dates for actions necessary to make the item available at the plurality of selling locations (See figures 8 and 9, column 4, lines 20-40 and 54-66, column 10, column 11, lines 15-35, wherein time periods for forecasting are set in the system), time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element), time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-

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67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

Landvater further teaches wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed from a supplier to the selling location using a time element) and wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, wherein the good is distributed from a supplier to the selling location using a time element).

Both Garry and Landvater are concerned with stocking shelves to maintain displays. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the time elements discussed by Landvater in the display planning system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater, and page 5, section 1, and page 6, section 4, of Garry.

As per claims 35 and 37, claim 94 recites "lead time for an order or other action". Thus, "other actions" are made optional by the claim language. Landvater discloses lead times for an order, and thus other actions are not required. See MPEP 2106 II (C).

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As per claim 40, Garry does not expressly disclose and Landvater teaches wherein simulating includes adding the presentation quantities and the projected demand requirements for the item at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities and demand requirements).

Garry discloses a computer program used to plan displays across a chain of stores and refining this plan for specific individual stores. Garry further discloses stocking considerations and shelf capacity associated with the display plans. Landvater discloses storing information concerning presentations and displays in the system and using this information to plan inventory. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claims 41 and 44, Garry teaches selecting the presentation quantity to be the average presentation quantity for the location during the predetermined selling period and the largest presentation quantity associated with the item at the selling location for any day of the predetermined selling period (See page 6, sections 1, 2, and 4, wherein the largest presentation quantity is associated with the display. See also page 4, section 1, page 7, section 1, wherein an average is considered).

However, neither Garry nor Landvater expressly discloses selecting among a plurality of available approaches to calculating the presentation quantity.

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Garry discloses selecting a presentation quantity for the displays, this average quantity/capacity being set in the system. Landvater also discloses selecting a presentation quantity by the system and further discloses calculating demand needs based on the presentation plan. It is old and well known in the art to provide user's with menus of choices from which the user can select a choice to be implemented by the software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a menu for choosing an approach to select the type of presentation quantity value to use in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claims 42-43, Garry does not expressly disclose and Landvater teaches wherein the approach selected uses:

a presentation quantity for the selling location on the first day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

a presentation quantity on the day of the predetermined selling period when the good is received at the selling location (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

However, neither Landvater nor Garry expressly discloses selecting among a plurality of available approaches to calculating the presentation quantity.

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Garry discloses selecting a presentation quantity for the displays, this average quantity/capacity being set in the system. Landvater also discloses selecting a presentation quantity by the system and further discloses calculating demand needs based on the presentation plan. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

Further, it is old and well known in the art to provide user's with menus of choices from which the user can select a choice to be implemented by the software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a menu for choosing an approach to select the type of presentation quantity value to use in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 45, Garry does not expressly disclose the simulating aspect of the claim, as set forth above with respect to claim 94. Landvater teaches simulating, wherein the simulating includes selecting the larger of the presentation quantities or the projected demand requirements for the item at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 20-50, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

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Garry discloses a computer program used to plan displays across a chain of stores and refining this plan for specific individual stores. Garry further discloses stocking considerations and shelf capacity associated with the display plans. Landvater discloses storing information concerning presentations and displays in the system and using this information to plan inventory. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the stocking and inventory planning aspects of Landvater in the display planning system of Garry in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 46, Garry teaches wherein the presentation quantity used is the presentation quantity for the selling location on the last day of the predetermined selling period (See page 4, section 1, page 6, sections 1, 2, and 4, page 7, section 1).

Response to Argument

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BETH VAN DOREN whose telephone number is (571)272-6737. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. V. D./
April 28, 2008

/Beth Van Doren/
Primary Examiner, Art Unit 3623